

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CATHERINE JANE VALLE and DON)	Case No. 11-1489 SC
PEROLINO CRISTOBAL, individuals,)	
on behalf of themselves and all)	ORDER DENYING PLAINTIFFS'
persons similarly situated,)	<u>EX PARTE APPLICATION</u>
)	
Plaintiffs,)	
)	
v.)	
)	
LOWE'S HIW, INC., a Washington)	
corporation,)	
)	
Defendant.)	
)	

This is a putative class action in which Plaintiffs Catherine Jane Valle ("Valle") and Don Perolino Cristobal ("Cristobal") (collectively, "Plaintiffs") allege that Defendant Lowe's HIW, Inc. ("Defendant"), failed to pay them proper overtime compensation and provide them with accurate itemized wage statements. ECF No. 1 ("Compl."). On May 17, 2011, Defendant filed an amended motion to strike Plaintiffs' complaint and compel arbitration. ECF No. 15 ("Mot."). In support of its Motion, Defendant submits what it alleged to be arbitration agreements signed by both Plaintiffs. Seelye Decl. Exs. A & B ("Arb. Ags.").¹ Plaintiffs' opposition to Defendant's Motion is due July 1, 2011.

¹ Blake Seelye ("Seelye") filed a declaration in support of Defendant's Motion in which he alleges to be the human resources manager of the Lowe's store where Plaintiffs worked. ECF No. 16.

1 On June 21, 2011, Plaintiffs filed an ex parte motion to
2 continue the deadline to respond to Defendant's motion for sixty
3 days. ECF No. 17 ("Pls.' App."). Plaintiffs state that they plan
4 to argue that the arbitration agreements are unconscionable, and
5 they contend that a continuance is necessary so they can conduct
6 discovery as to procedural unconscionability. Id. at 2.

7 Defendant opposes Plaintiffs' Application. ECF No. 18
8 ("Opp'n"). Defendant argues that the Application is untimely and
9 unsupported by good cause. Id. at 2. Defendant claims that among
10 other material, Plaintiffs allegedly seek discovery of "[a]ll
11 arbitration agreements presented to members of the putative Class"
12 and "[t]he contact information for the putative Class members, who
13 are all witnesses to the presentation and negotiability,
14 negotiation, fear or retaliation, and execution of the arbitration
15 agreements." Id.

16 The Court DENIES Plaintiffs' Application. First, at this
17 stage in the proceedings, Plaintiffs are not representatives of a
18 class, and so any request for classwide discovery is premature.
19 Second, Plaintiffs delayed in filing their Application, waiting
20 until ten days before their opposition is due to seek a
21 continuance. Third, in order to establish unconscionability,
22 Plaintiffs must demonstrate that the arbitration agreements they
23 signed are both procedurally and substantively unconscionable.
24 Plaintiffs do not suggest the discovery is necessary to determine
25 substantive unconscionability, as it can ordinarily be determined
26 from the face of the agreement. Thus, if Plaintiffs cannot make
27 some showing of substantive unconscionability, then discovery into
28 procedural unconscionability would be futile. Finally, as

1 Defendant notes in its Opposition, Plaintiffs can support a
2 procedural unconscionability argument with declarations of Valle
3 and Cristobal in which they attest to the circumstances surrounding
4 the drafting, negotiation, and presentation of the arbitration
5 agreements. The Court will consider permitting limited discovery
6 into the making of the two arbitration agreements if Plaintiffs
7 establish in their opposition that such discovery is necessary.

8 For the above reasons, Plaintiffs' Application is DENIED.

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10 IT IS SO ORDERED.

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12 Dated: June 24, 2011



13 UNITED STATES DISTRICT JUDGE
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